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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

WILDERNESS TRAINING & CONSULTING, LLC, an Oregon limited liability company, LAKE MONTEZUMA RTC, LLC, an Oregon limited liability company, ESCALANTE RTC, LLC, an Oregon limited liability company, SYRACUSE RTC, LLC, an Oregon limited liability company, and SYRACUSE INSTITUTE, LLC, an Oregon limited liability company, Plaintiffs, Counterclaim-Defendants. vs. ASPEN EDUCATION GROUP, INC., a California corporation, ASPEN YOUTH, INC., a California corporation, TURN-ABOUT RANCH, INC., a Delaware corporation, ISLAND VIEW RESIDENTIAL TREATMENT CENTER, LLC, a Delaware limited liability company, COPPER CANYON ACADEMY, LLC, a Delaware limited liability company, ASPEN INSTITUTE FOR BEHAVIORAL ASSESSMENT, LLC, a Delaware limited liability company, and CRC HEALTH CORPORATION, a Delaware corporation, Defendants, Counterclaimants.	**DEFENDANTS' ANSWER TO PLAINTIFFS' AMENDED COMPLAINT** **AND** **COUNTERCLAIMANTS' COUNTERCLAIM** Case No. 2:14-cv-00866 Judge Ted Stewart

Defendants, by and through counsel of record and the law firm of CHRISTENSEN & JENSEN, hereby respond to the allegations of Plaintiffs' Amended Complaint as follows:

FIRST DEFENSE

All or part of Plaintiffs' Amended Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Defendants respond to the individual allegations of Plaintiffs' Amended Complaint as follows:

1. Defendants admit Paragraph 1.

2. Defendants admit Paragraph 2.

3. Defendants admit Paragraph 3.

4. Defendants admit Paragraph 4.

5. Defendants admit Paragraph 5.

6. Defendants admit Paragraph 6.

7. Defendants admit Paragraph 7.

8. Defendants admit Paragraph 8.

9. Defendants admit Paragraph 9.

10. Defendants admit Paragraph 10.

11. Defendants admit Paragraph 11.

12. Defendants admit Paragraph 12.

13. With respect to Paragraph 13, Defendants admit that Turn-About Ranch, Inc., Island View Residential Treatment Center, LLC, Copper Canyon Academy, LLC, Aspen

Institute for Behavioral Assessment, LLC and Aspen Education Group, Inc. as sellers, and Lake Montezuma RTC, LLC, Escalante RTC, LLC, Syracuse RTC, LLC, Syracuse Institute, LLC, and Wilderness Training & Consulting, LLC as buyers, entered into a contract entitled "Asset Purchase Agreement" (hereinafter "Agreement") dated March 7, 2014, which document speaks for itself. Defendants deny the remaining allegations of Paragraph 13.

14. With respect to Paragraph 14, Defendants admit only that Section 6.11 of the Agreement speaks for itself.

15. With respect to Paragraph 15, Defendants admit that subsequent to March 7, 2014, Island View Residential Treatment Center, LLC, Copper Canyon Academy, LLC, and/or Aspen Institute for Behavioral Assessment, LLC received certain funds relating to operations of the successor programs operated by one or more of the Plaintiffs, and deny remaining allegations of Paragraph 15.

16. With respect to Paragraph 16, Defendants admit that certain of the Plaintiffs have made demands to Island View Residential Treatment Center, LLC, Copper Canyon Academy, LLC, and/or Aspen Institute for Behavioral Assessment, LLC regarding payment of funds allegedly subject to Paragraph 6.11 of the Agreement and that Defendants have not tendered certain of these claimed funds to Plaintiffs, and deny remaining allegations of Paragraph 16.

17. With respect to Paragraph 17, Defendants state that Section 10.16 of the Agreement speaks for itself. Section 10.16 provides, in total, as follows:

> **Section 10.16 Attorney's Fees.** If any arbitration or litigation is instituted to interpret, enforce, or rescind this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind incurred in connection with the arbitration, the litigation, any appeal or petition for

review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

18. Defendants reallege and reincorporate by reference their responses to the preceding paragraphs as if fully set forth herein.

19. Defendants admit that the Agreement is a binding and enforceable contract, and deny remaining allegations of Paragraph 19.

20. Defendants deny Paragraph 20.

21. Defendants deny Paragraph 21.

22. Defendants deny Paragraph 22.

23. Defendants deny Paragraph 23.

24. Defendants reallege and reincorporate by reference their responses to the preceding paragraphs as if fully set forth herein.

25. Defendants deny Paragraph 25.

26. Defendants deny Paragraph 26.

27. Defendants deny Paragraph 27.

28. Defendants deny Paragraph 28.

29. Defendants deny Paragraph 29.

DENIAL OF ALL OTHER ALLEGATIONS

Defendants deny each and every allegation of Plaintiffs' Amended Complaint not expressly admitted herein.

RESPONSE TO PLAINTIFFS' PRAYER FOR RELIEF

Defendants deny that Plaintiffs are factually, legally, or equitably entitled to any of the relief requested in Paragraphs 1 through 3 of their prayer for relief, and request that such relief be denied.

THIRD DEFENSE

Failure to mitigate. Defendants are not liable for any damages attributable to Plaintiffs' failure to mitigate their alleged damages.

FOURTH DEFENSE

Failure of condition precedent. Plaintiffs' claims are barred or limited to the extent an express condition precedent contained in the Agreement was not satisfied.

FIFTH DEFENSE

Estoppel. Plaintiffs' claims are barred or limited to the extent Plaintiffs made statements and/or representations that were inconsistent with their later conduct, which induced Defendants to act in reasonable reliance on such statements and/or representations, and which caused Defendants injury.

SIXTH DEFENSE

Failure of consideration. Plaintiffs' claims are barred or limited to the extent there was a failure of consideration for the Agreement.

SEVENTH DEFENSE

Setoff. To the extent Plaintiffs are awarded any damages, liability for which Defendants wholly deny, Defendants are entitled to claim a set-off for the amounts owed to Defendants by Plaintiffs.

EIGHTH DEFENSE

Preceding material breach. Plaintiffs' claims are barred to the extent Plaintiffs materially breached the Agreement, including Plaintiffs' failure to perform as set forth more fully in Defendants' counterclaims set forth *infra*.

NINTH DEFENSE

Waiver, laches, and duress. Plaintiffs' claims may be barred by the doctrines of waiver, laches or duress.

TENTH DEFENSE

Further affirmative defenses. Defendants reserve the right to amend this answer to raise any and all defenses, affirmative or otherwise, which may become available during the course of this action.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment as follows:

1. That the amended complaint be dismissed with prejudice, and that Plaintiffs take nothing by their action;

2. That Defendants be awarded their reasonable attorney fees incurred in the defense of the claims, all costs of court, and interest to the extent allowed by law and the subject Agreement; and,

3. That Defendants be awarded any and all other relief deemed appropriate or equitable by the Court.

COUNTERCLAIMS

Counterclaimants Aspen Education Group, Inc. ("Aspen Education"), Aspen Youth, Inc. ("Aspen Youth"), Turn-About Ranch, Inc. ("Turn-About Ranch"), Island View Residential Treatment Center, LLC ("Island View"), Copper Canyon Academy, LLC ("Copper Canyon"), Aspen Institute For Behavioral Assessment, LLC ("Aspen Institute"), and CRC Health Corporation ("CRC Health") (hereinafter collectively "Counterclaimants"), for their counterclaim allege the following claims for relief against Counterclaim Defendants Wilderness Training & Consulting, LLC, Lake Montezuma RTC, LLC, Escalante RTC, LLC, Syracuse RTC, LLC, and Syracuse Institute, LLC (hereinafter collectively "Counterclaim Defendants"):

PARTIES AND JURISDICTION

1. Counterclaimant Aspen Education is a California corporation with a principal place of business in Cupertino, California.

2. Counterclaimant Aspen Youth is a California corporation with a principal place of business in Cupertino, California.

3. Counterclaimant Turn-About Ranch is a Delaware corporation with a principal place of business in Escalante, Utah.

4. Counterclaimant Island View is a Delaware limited liability company and its sole member is Defendant Aspen Youth, Inc.

5. Counterclaimant Copper Canyon is a Delaware limited liability company and its sole member is Defendant Aspen Youth, Inc.

6. Counterclaim-Plaintiff Aspen Institute is a Delaware limited liability company and its sole member is Defendant Aspen Youth, Inc.

7. Counterclaim-Plaintiff CRC Health is a Delaware corporation with a principal place of business in Cupertino, California.

8. Counterclaim-Defendant Wilderness Training & Consulting, LLC, is an Oregon limited liability company and its members are:

a. Opal Creek Capital, LLC, an Oregon limited liability company

b. JLC, LLC, an Oregon limited liability company

c. PGO, LLC, a North Carolina limited liability company

d. Wayne Laird, an individual, and resident and domiciliary of Oregon

9. Counterclaim-Defendant Lake Montezuma RTC, LLC, is an Oregon limited liability company and its sole member is Wilderness Training & Consulting, LLC. Counterclaim-Defendant Escalante RTC, LLC, is an Oregon limited liability company, and its sole member is Wilderness Training & Consulting, LLC.

10. Counterclaim-Defendant Syracuse RTC, LLC, is an Oregon limited liability company and its sole member is Wilderness Training & Consulting, LLC.

11. Counterclaim-Defendant Syracuse Institute, LLC, is an Oregon limited liability company, and its sole member is Wilderness Training & Consulting, LLC.

12. The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332, in that there is diversity of citizenship and the amount in controversy in this case exceeds $75,000.

FACTUAL ALLEGATIONS

13. Counterclaimants hereby incorporate the allegations contained in the preceding Paragraphs as if set forth herein in their entirety.

14. On or about March 7, 2014, Aspen Education, Turn-About Ranch, Island View, Copper Canyon, and Aspen Institute, as sellers on one hand (hereinafter collectively "Sellers"), and Wilderness Training & Consulting, LLC, Lake Montezuma RTC, LLC, Escalante RTC, LLC, Syracuse RTC, LLC, and Syracuse Institute, LLC, as buyers on the other (hereinafter collectively "Buyers"), entered into a contract entitled Asset Purchase Agreement (hereinafter, the "Agreement").

15. A true and correct copy of the Agreement is attached hereto as Exhibit 1.

16. The Agreement provided for the sale and assignment of "substantially all the assets, and certain specified liabilities" of Sellers Turn-About Ranch, Island View, Copper Canyon, and Aspen Institute, to Buyers Lake Montezuma RTC, LLC, Escalante RTC, LLC, Syracuse RTC, LLC, and Syracuse Institute, LLC, respectively.

Relevant Provisions of the Agreement

17. Section 2.05 of the Agreement governed the purchase price and provides:

> **Section 2.05 Purchase Price.** Subject to the terms and conditions of this Agreement, the purchase price to be paid by Buyers or their designees for the sale and purchase of the Purchased Assets shall be $650,000 per Program, for an aggregate purchase price of $2,600,000 (minus with respect to Turn-About Ranch, the purchase price for the Real Property, which shall be paid pursuant to the Real Property Purchase Agreement), subject to adjustment pursuant to Section 2.06(a) hereof (the "Closing Purchase Price"), subject to further adjustment pursuant to Section 2.06(b) hereof (such collective net amount, the "Purchase Price"), plus the assumption of the Assumed Liabilities. The Closing Purchase Price shall be paid at the Closing by wire transfer of immediately available funds to an account specified in writing by Sellers prior to the Closing. In the event any Program is removed from the sale under this Agreement, per Section 7.04, the Purchase Price shall be adjusted to reflect the removal of such Program.

18. Section 2.06 of the Agreement governed adjustment of the purchase price and provides:

Section 2.06 Purchase Price Adjustment

(a) **Closing Adjustment**.

(i) At least three Business Days prior to the Closing Date, the Sellers shall deliver to Buyers a statement setting forth Sellers' good faith estimate of the calculation of Closing Working Capital for each Program separately and for the Programs collectively (for the Programs collectively, the **"Estimated Closing Working Capital"**), which statement shall be prepared in accordance with GAAP, subject to any exceptions as agreed by the parties and set forth on Schedule 2.06(a).

(ii) The "**Closing Adjustment**" shall be an amount equal to the Estimated Closing Working Capital. If the Closing Adjustment is a positive number, then the Closing Purchase Price shall be increased by an amount equal to the Closing Adjustment. If the Closing Adjustment is a negative number, then the Closing Purchase Price shall be reduced by an amount equal to the Closing Adjustment.

(b) **Post-Closing Adjustment.**

(i) Within 90 days after the Closing Date, Buyers shall prepare and deliver to Sellers a statement (the "**Closing Working Capital Statement**") setting forth Buyers' calculation of actual Closing Working Capital for each Program separately and for the Programs collectively (for the Programs collectively, the "**Final Closing Working Capital**"), which statement shall be prepared in accordance with GAAP, subject to any exceptions as agreed by the parties and set forth on Schedule 2.06(a).

(ii) The "**Post-Closing Adjustment**" shall be an amount equal to the Final Closing Working Capital less the Estimated Closing Working Capital. If the Post-Closing Adjustment is a positive number, Buyers shall pay to Sellers an amount equal to the Post-Closing Adjustment. If the Post-Closing Adjustment is a negative number, Sellers shall pay to Buyers an amount equal to the Post-Closing Adjustment.

(c) **Examination and Review**.

(i) Examination. After receipt of the Closing Working Capital Statement, Sellers shall have 30 days (the "**Review Period**") to review the Closing Working Capital Statement. During the Review Period, Sellers shall have access to the relevant books and records of Buyers and work papers prepared by Buyers to the extent that they relate to the Closing Working Capital Statement as Sellers may reasonably request for the purpose of reviewing the Closing Working Capital Statement and to prepare a Statement of Objections (defined below), provided, that such access shall be in a manner that does not interfere with the normal business operations of Buyers.

(ii) Objection. On or prior to the last day of the Review Period, Sellers may object to the Closing Working Capital Statement by delivering to Buyers a written statement setting forth Sellers' objections in reasonable detail, indicating each disputed item or amount and the basis for Sellers' disagreement therewith (the "**Statement of Objections**"). If Sellers fail to deliver the Statement of Objections before the expiration of the Review Period, the Closing Working Capital Statement and the Post-Closing Adjustment reflected in the Closing Working Capital Statement shall be deemed to have been accepted by Sellers. If Sellers deliver the Statement of Objections before the expiration of the Review Period, Buyers and Sellers shall negotiate in good faith to resolve such objections within 30 days after the delivery of the Statement of Objections (the "**Resolution Period**"), and, if the same are so resolved within the Resolution Period, the Post-Closing Adjustment and the Closing Working Capital Statement with such changes as are agreed in writing by Buyers and Sellers, shall be final and binding.

(iii) Resolution of Disputes. If Sellers and Buyers fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then either party may submit any amounts remaining in dispute ("**Disputed Amounts**") to the office of a mutually agreeable firm of independent certified public accountants (the "**Independent Accountant**") who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any necessary adjustments to the Post-Closing Adjustment and the Closing Working Capital Statement. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Working Capital Statement and the Statement of Objections, respectively. The fees and expenses of the Independent Accountant shall be borne equally by Sellers, on the one hand, and Buyers, on the other hand.

(iv) Determination by Independent Accountant. The Independent Accountant shall make a determination as soon as practicable within 30 days (or such other time as the parties hereto shall agree in writing) after its engagement, and its resolution of the Disputed Amounts and its adjustments to the Closing Working Capital Statement and/or the Post-Closing Adjustment shall be conclusive and binding upon the parties hereto.

(v) Payments of Post-Closing Adjustment. Except as otherwise provided herein, any payment of the Post-Closing Adjustment shall (A) be due (x) within five business days of acceptance of the applicable Closing Working Capital

> Statement or (y) if there are Disputed Amounts, then within five business days of the resolution described in clause (iv) above; and (B) be paid by wire transfer of immediately available funds to such account as is directed by Buyers or Sellers, as the case may be, or as otherwise agreed between the parties in writing. Any payment of the Post-Closing Adjustment owed by either party shall be paid to the other party by wire transfer of immediately available funds to such account as is directed by such other party, or as otherwise agreed between the parties in writing.
>
> (d) For the avoidance of doubt, all operating expenses of the Program shall, except for the Assumed Liabilities and the broker's and finder's fees, attorney's fees and all other fees incurred by Sellers in connection with the negotiation and consummation of the transactions contemplated by this Agreement and as otherwise expressly provided herein, be adjusted and allocated between Sellers and Buyers to the extent necessary in order that all such expenses attributable to the operation of the Program on or before the Closing Date (regardless of the date of order or invoice) shall be for the account of, and paid by, Sellers, and all such expenses attributable to the operation of the Program following the Closing Date (regardless of the date of order or invoice) shall be for the account of, and paid by, Buyers.

19. Article I of the Agreement sets forth defined terms and defines "Closing Working Capital" as "an amount equal to the value of (a) Current Assets, less (b) Current Liabilities, determined as of the close of business on the Closing Date."

20. Article I of the Agreement sets forth defined terms and defines Material Adverse Change as follows:

> "**Material Adverse Change**" means any event, occurrence or change (a) that has been or could reasonably be expected to be, individually or in the aggregate, materially adverse to the business, or results of operations of a Seller or the Purchased Assets as a whole or (b) the ability of Sellers to consummate the transactions contemplated by this Agreement with respect to a Project, including but not limited to changes resulting from changes in the level of Sellers' internet marketing efforts and expenditures, except as may be related to or resulting from (a) the announcement or consummation of the transactions contemplated hereby, or the execution of this Agreement or the performance of obligations hereunder, including the impact of any of the foregoing on relationships with customers, suppliers or employees, (b) conditions affecting the global or United States economy or financial markets as a whole, or generally affecting the industries in which a Seller conducts its business, (c) any change or proposed change in any

applicable Law or in GAAP or any interpretation thereof, (d) the commencement, occurrence or continuation of any war, armed hostilities or acts of terrorism, (e) earthquakes, hurricanes, floods or other natural disasters, or (f) any action taken by, or with the consent of, Buyers or any of their Affiliates with respect to the transactions contemplated hereby or with respect to the Sellers or their Affiliates, but with respect to items described in the foregoing (b), (c) (d), or (e), only to the extent that such events, circumstances, developments, conditions, occurrences, states of facts, changes or effects do not have a disproportionate effect on the Program or the Purchased Assets relative to other participants in the industry in which the respective Seller operates.

21. Paragraph 8.07 governs remedies for claims arising under the Agreement and provides:

Section 8.07 Exclusive Remedy. Following the Closing, except in cases of common law fraud, this Article VIII will provide the exclusive remedy for any claim arising out of this Agreement or the Transaction Documents, except to the extent related to breaches of any covenants hereunder or thereunder that contemplate performance by the parties following the Closing, for which the remedy of specific performance and injunctive or other equitable relief is expressly preserved, and of this Article VIII. Without limiting the generality of the preceding sentence, except in cases of common law fraud, each of the parties acknowledge and agree that it will not have, and that it will not seek any, recourse against any Affiliate of the other party (other than to the extent such recourse is expressly provided for in the Transaction Documents) or any of the other party's or its Affiliates' respective stockholders, directors, officers, employees, agents, consultants or representatives for any damage, loss, liability or expense resulting from or arising under this Agreement.

22. Article I of the Agreement defines "Affiliate" as follows:

"Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to elect a majority of the managers or directors of that Person or to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

23. Article I of the \ Agreement defines Person as follows: "'Person' means a natural person, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity."

24. Section 2.03 governed the liabilities that Buyers assumed under the Agreement and provides:

> **Section 2.03. Assumed Liabilities.** Subject to the terms and conditions set forth herein, each Buyer shall assume and agree to pay, perform and discharge only the following Liabilities of the respective Seller (collectively, the "Assumed Liabilities"), and no other liabilities:
> (a) all obligations to perform services under the respective Program in respect of Student Deposits existing as of the close of business on the Closing Date and reflected as a Current Liability in the computation of Closing Working Capital;
> (b) all obligations to perform services under the respective Program in respect of Prepaid Tuition existing as of the close of business on the Closing Date and reflected as a Current Liability in the computation of Closing Working Capital provided, ho ever, Prepaid Tuition for "enrollment fees" for which no services or insubstantial services are required following Closing and which are non-refundable will not be reflected as a Current Liability in the computation of Closing Working Capital, although Seller will assume obligations to perform services in respect thereof;
> (c) all contractual obligations, liabilities and commitments of the respective Seller arising after the Closing Date pursuant to the Assigned Contracts;
> (d) all obligations for accrued paid time off for employees of the respective Seller in connection with the respective Program as of the Closing Date, but only to the extent such employees become employed by the respective Buyer and such accrued paid time off is reflected as a Current Liability in the computation of Closing Working Capital and in the case of employees in Arizona, the employee agrees in writing to permit the Buyer to credit such employee with accrued paid time off instead of Seller paying out such accrued time off as of termination of such employee's employment and
> (e) all trade accounts payable of a respective Seller owed to third parties in connection with the respective Program that remain unpaid and are not delinquent as of the Closing Date, arose in the ordinary course of business consistent with past practice on or prior to the Closing Date and are reflected as a Current Liability in the computation of Closing Working Capital.

25. Section 7.04 of the Agreement governed removing a program from the sale and provides:

> Under any of the following circumstances one or more Programs shall be removed from the sale under this Agreement:
>
> > (i) Buyers give written notice to Sellers no later than 3pm Pacific Time on March 21, 2014 that Buyers have made a good faith business determination not to purchase the assets of one or more Programs after Buyers' onsite visits and interviews with key management of the respective Program or Programs; or
> >
> > (ii) a failure of a condition to a party's obligation to consummate the transactions under Section 7.01, 7.02, or 7.03 occurs (and such party reasonably elects not to waive such condition) only with respect to one or more, but not all, of the Programs, in which case such affected Programs shall be removed from the Sale.

Buyers' Post-Closing Adjustment of the Purchase Price

26. Subsequent to the execution of the Agreement, on or about July 23, 2014 Counterclaim-Defendants submitted their Working Capital Statement for Copper Canyon pursuant Section 2.06(b) of the Agreement and on or about August 15, 2014 for Island View and Aspen Institute.

27. In their Closing Working Capital Statements, Buyers claimed a Post-Closing Adjustment of the purchase price based upon their calculation of the amount of "Closing Working Capital," which is defined as "an amount equal to the value of (a) Current Assets, less (b) Current Liabilities, determined as of the close of business on the Closing Date."

28. At the time they submitted their Closing Working Capital Statement, or thereafter, Buyers incorrectly alleged that $138,426 in Copper Canyon accounts receivable and $69,000 in Island View accounts receivable (hereinafter, "Accounts Receivable") were allegedly not collectible and were accordingly a liability of Sellers pursuant to the calculation of Working Capital.

29. Buyers' allegation that the Accounts Receivable were uncollectible and that they would be a liability of Sellers pursuant to the calculation of Working Capital was false.

30. Based on Buyers' incorrect contention that the Accounts Receivable were not collectible, Buyers claimed that the Current Assets were significantly less than the amount estimated by Sellers' Estimated Closing Working Capital statement.

31. As a result of Buyers' incorrect contentions that the Current Assets were valued less due to the allegation that the Accounts Receivable were uncollectible, and that such Accounts Receivable are a liability of Sellers pursuant to the calculation of Working Capital, Buyers improperly claimed an adjustment in the purchase price the amount of $207,426.

32. Buyers' Closing Working Capital Statement did not comply with generally accepted accounting principles.

33. Buyers' conduct deprived Sellers of the benefit of the bargain, i.e., the purchase price Buyers were required to pay to Sellers in consideration for the transfer of the assets.

Buyers' Improper Termination of the Purchase as to Island View Residential Treatment Center and Aspen Institute Based Upon False Claim of Material Adverse Change

34. Subsequent to the parties' execution of the Agreement, on April 15, 2014, Buyers informed Sellers that they were claiming the occurrence of two Material Adverse Changes as a basis for not completing the purchase of Island View and Aspen Institute.

35. Buyers' attempt to cancel the sale of Island View and Aspen Institute occurred on April 15, 2014, which was after the March 21, 2014 deadline imposed by Section 7.04 of the Agreement.

36. Specifically, as to Island View, Buyers claimed that Island View experienced significant declines in enrollment causing financial losses, which Buyers claimed was a Material Adverse Change as defined in the agreement.

37. Buyers' contention that Island View Residential Treatment Center experienced significant declines in enrollment and that it sustained financial losses was false.

38. Further, as to Aspen Institute, Buyers asserted that the departure of Dr. Winston, Aspen Institute's medical director, was likewise a Material Adverse Change.

39. Although Dr. Winston did depart his role as Aspen Institute's medical director, it is well known in the relevant industry that medical staff come and go and that businesses can continue operating successfully notwithstanding a medical director's departure.

40. Medical directors can be recruited and hired in the ordinary course of business.

41. There is no provision in the Agreement that required Sellers to tell Buyers of the medical director's departure.

42. Upon information and belief, at the time Buyers made such claims regarding Material Adverse Changes, Buyers did so with the intent to placing Sellers under duress and to force them to amend the Agreement to reduce the purchase price.

43. As a result of Buyers' false claims of Material Adverse Changes and duress imposed upon Buyers, Sellers had no other viable alternative than to be pressured into accepting a 40% reduction in the purchase price for Island View and Aspen Institute.

44. At the time Buyers made the contentions regarding Material Adverse Changes, Buyers had already been onsite and announced their acquisition to the employees, had the

opportunity to direct operations of Island View and Aspen Institute, and had disclosed the transaction to the relevant marketplace.

45. Although Sellers accepted the lower purchase price as demanded by Buyers pursuant to their false claims of Material Adverse Change, Sellers' involuntary agreement to lower the purchase price for Island View and Aspen Institute was induced by improper threats by Buyers to cancel the purchase all together, which threats left Sellers with no reasonable alternative but to agree to amend the Agreement under duress.

46. Abandoning the transaction for sale of Island View and Aspen Institute was not a reasonable alternative because of the amount of time, costs, effort, energy, and money invested in the transaction.

Buyers' Payments of PTO to Employees

47. As part of the Agreement, Section 2.03(d), Buyers undertook the obligation to pay accrued paid time off (collectively "PTO") of employees of Sellers who became employed by Buyers after signing the Agreement to the extent these amounts were a liability at closing.

48. Sellers Island View and Aspen Institute paid PTO to employees at Closing, and therefore such amounts did not constitute a liability of these Sellers at closing.

49. Buyers discovered that Island View and Aspen Institute paid the aforesaid PTO at closing at or promptly following closing.

50. Despite this timely knowledge, Buyers proceeded to double pay the same employees the same amount of PTO for the same time period.

51. Upon information and belief, Buyers double paid the employees despite notification from Sellers because Buyers intended to make an unsupported claim for the payment in the Closing Working Capital Statement.

52. Buyers did in fact claim a reduction in the Closing Working Capital Statement by using the PTO payment to assert that the Current Assets were significantly less than the amount estimated by Sellers' Estimated Closing Working Capital statement, thus reducing the ultimate purchase price under the Agreement.

Improper Claims Against CRC Health,
Turn-About Ranch and Aspen Youth

53. Plaintiffs' Amended Complaint asserts causes of action against Defendants-Counterclaimants CRC Heath, Aspen Youth, and Turn-About Ranch.

54. CRC Heath, Aspen Youth, and Turn-About Ranch are not parties to the Agreement.

55. Defendant Turn-About was excluded from the Agreement per an amendment to the Agreement.

56. The Agreement provides that the sole recourse of Buyers under the Agreement is to the parties thereto, including Aspen Education Group and the "Sellers" as defined in the Agreement, i.e. Island View, Copper Canyon, and Aspen Institute.

FIRST CLAIM FOR RELIEF
BREACH OF CONTRACT

57. Counterclaimants hereby incorporate the allegations contained in the preceding Paragraphs as if set forth herein in their entirety.

58. The Agreement is a valid and enforceable contract.

59. Counterclaim-Defendants have breached the Agreement including, but not limited to, the following particulars:

a. Breaching Section 2.05 by failing to pay the purchase price based upon the false and incorrect contention that the departure of the Aspen Institute medical director was a Material Adverse Change;

b. Breaching Section 2.05 by failing to pay the purchase price based upon the false and incorrect contention that the alleged decrease in revenue of Island View was a Material Adverse Change;

c. Breaching 7.04 of the Agreement by attempting to cancel the sale of Island View and Aspen Institute after the agreed on final deadline; and,

d. Breaching Section 8.07 of the Agreement by filing suit against CRC Heath, Turn-About Ranch and Aspen Youth when the Agreement expressly provided that Buyers' sole recourse was against Sellers alone, and CRC Heath, Turn-About Ranch and Aspen Youth are not parties to the Agreement.

60. Counterclaimants have been damaged as a result of Counterclaim-Defendants' breaches of the Agreement in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF
BREACH OF IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING

61. Counterclaimants hereby incorporate the allegations contained in the preceding Paragraphs as if set forth herein in their entirety.

62. The Agreement included a covenant implied by law that Counterclaim-Defendants would act in good faith and engage in fair dealings with respect to Counterclaimants and in connection with their performance under the Agreement.

63. Counterclaim-Defendants owed Counterclaimants an affirmative duty to engage in honest and good faith efforts to fulfill the Agreement.

64. Counterclaim-Defendants breached the implied duty of good faith and fair dealing including, but not limited to, by engaging in the following acts:

a. Paying the PTO to former Island View and Aspen Institute employees, which resulted in a double payment to the employees (one payment from Sellers and one from Buyers), in an attempt to alter the calculation of Buyers' Current Assets and claim that the Current Assets were less than the amount estimated by Sellers' Estimated Closing Working Capital statement, thereby improperly claiming an adjustment in the purchase price;

b. Asserting that the Accounts Receivable that Buyers' assumed under the Agreement were uncollectible, in an attempt to alter the calculation of Buyers' Current Assets and claim that the Current Assets were less than the amount estimated by Sellers' Estimated Closing Working Capital statement, thereby improperly claiming an adjustment in the purchase price; and,

c. Failing to engage in good faith efforts to fulfill their other performance obligations under the Agreement.

65. Counterclaim-Defendants' conduct deprived Counterclaimants of the benefit of the bargain.

66. Counterclaimants have been damaged as a result of Counterclaim-Defendants' breaches of the implied covenant of good faith and fair dealing in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
DECLARATORY JUDGMENT

67. Counterclaimants hereby incorporate the allegations contained in the preceding Paragraphs as if set forth herein in their entirety.

68. Pursuant to the Utah Declaratory Judgment Act, U.C.A. § 78B-6-401, Counterclaimants are entitled to a declaratory judgment as follows:

a. Counterclaim-Defendants breached the Agreement as set forth in Paragraph 59, subparagraphs a. through d., *supra*;

b. Counterclaim-Defendants breached the implied duty of good faith and fair dealing as set forth herein in Paragraph 64, subparagraphs a. through c., *supra*;

c. Counterclaimants have been damaged as a result of Counterclaim-Defendants' breaches of the Agreement;

d. Counterclaimants have been damaged as a result of Counterclaim-Defendants' breaches of the implied covenant of good faith and fair dealing.

COUNTERCLAIMANTS' PRAYER FOR RELIEF

WHEREFORE, Counterclaimants pray for a judgment against Counterclaim-Defendants, jointly, as follows:

a. On their first and second claims for relief, awarding Counterclaimants their actual damages;

b. On its third claim for relief, a declaratory judgment as to the matters asserted in Paragraph 68, *supra*, and its subparagraphs a. through d.;

c. Pursuant to Section 10.16 of the Agreement, awarding Counterclaimants reasonable attorney fees and costs incurred in bringing this action; and,

d. For such other and further relief as the Court deems appropriate under the circumstances.

DATED this 16th day of December, 2014.

CHRISTENSEN & JENSEN, P.C.

/s/ Sarah E. Spencer

Nathan D. Alder
Sarah Elizabeth Spencer
Attorneys for Defendants and Counterclaimants

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of December, 2014, a true and correct copy of the foregoing **ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIMS** was delivered via the court's electronic filing system to the following:

Erik A. Olson
Trevor C. Lang
MARSHALL OLSON & HULL, P.C.
10 Exchange Place, Suite 350
Salt Lake City, Utah 84111

Anne L. MacLeod